

Notified

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-219499.2 DATE: January 3, 1986
MATTER OF: Abar Ipsen Industries

DIGEST:

1. Bid indicating items would be shipped F.O.B. origin rather than F.O.B. destination as required by IFB was properly determined to be nonresponsive since change in delivery terms is a material one affecting the substance of the bid.
2. The importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the government might realize monetary savings if a material deficiency in a bid is corrected or waived.

Abar Ipsen Industries (Abar) protests the rejection of its low bid as nonresponsive under step two of a two-step sealed bidding procurement (invitation for bids No. F42650-85-B-3074) (IFB) for vertical, top-load, heat treating furnaces issued by the Department of the Air Force. Abar and the awardee of the contract were the only two offerors under the first-step (request for technical proposals No. F42650-85-R-3074) that submitted technically acceptable proposals.

We deny the protest.

The contracting officer determined Abar's bid to be nonresponsive because the firm qualified its price and delivery terms. As part of its bid, Abar submitted literature which stated that the "Prices quoted are subject to the terms and conditions set forth hereinafter." One of these terms and conditions was that Abar's prices were based upon shipment "FOB Cherry Hill, Illinois and shipping points"--in other words, on the basis of shipment F.O.B. origin. The IFB required the submission of prices based on shipment F.O.B. destination (Hill Air Force Base, Utah) rather than F.O.B. origin. Also, the literature submitted by Abar contained a detailed schedule requiring progress payments on specific dates and indicated that a 180-day

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warranty would be provided rather than the 12-month warranty required by the solicitation. Since section 14.404-2(e) of the Federal Acquisition Regulation (FAR) (FAC 84-5, Apr. 1, 1985) states that objectionable conditions in a bid may not be ignored if they affect the substance (price, quantity, quality, or delivery) of the bid, the contracting officer concluded that rejection of Abar's bid was required.

Abar contends that the questions raised by the Air Force are mere "technicalities" and, as such, do not provide a sufficient basis for the rejection of its bid. Also, Abar argues that its original proposal obligated the firm to comply with the terms of the solicitation. In addition, Abar contends that its standard "Terms and Conditions" submitted with its bid applied only where they did not conflict with the solicitation. Abar notes that its bid is approximately \$56,000 lower than the awardee's and questions the effect of the awardee's protest to our Office against the award to Abar, subsequently withdrawn, on the Air Force's decision.

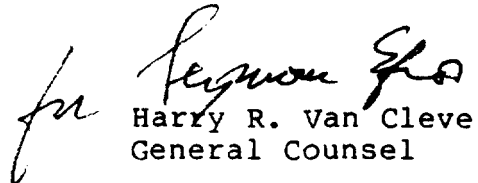
The statement in Abar's bid that its prices were based upon shipment F.O.B. origin, rather than F.O.B. destination, constitutes a sufficient basis for the Air Force's nonresponsiveness determination and the rejection of Abar's bid. We have held that when a solicitation requires that bids be submitted on an F.O.B. destination basis, a bid which specifies that delivery will be F.O.B. origin is nonresponsive. Avantek, Inc., B-219622, Aug. 8, 1985, 85-2 CPD ¶ 150. This is because the change in shipment terms shifts the risk of loss during transit from the bidder to the government, a burden which the IFB's F.O.B. destination clause placed on the contractor. Barber-Colman Co., B-203132, Aug. 11, 1981, 81-2 CPD ¶ 122. Also, since the exception taken by Abar to the delivery requirement of the IFB is a material one affecting the substance of the bid, Abar's bid was properly rejected as nonresponsive. A&H Precision Products, Inc., B-206932, Apr. 16, 1982, 82-1 CPD ¶ 354.

Furthermore, while there is a presumption that a bidder found acceptable under step one would not disqualify its bid in step two by inserting a condition which contradicts its accepted step one proposal, see, e.g., Universal Communications Systems, Inc., B-205032, Sept. 20, 1982, 82-2 CPD ¶ 236, we do not believe this presumption applies here since Abar had not bound itself to the F.O.B. destination requirement in its step one technical

proposal. The "Terms and Conditions" stipulated by Abar did not indicate that they were inapplicable when in conflict with requirements of the IFB. Also, Abar's initial proposal went to the technical acceptability of the furnaces Abar was offering to furnish, not to matters relating to price, which was the reason for the submission of bids under step two of the procurement. Therefore, we agree with the Air Force that Abar's bid was nonresponsive.

In view of our conclusion above, we cannot conclude that the awardee's protest against an award to Abar was other than justified. With respect to Abar's contention that the government would save money by making an award to Abar, the importance of maintaining the integrity of the competitive bidding system outweighs the possibility that the government might realize monetary savings if the material deficiency leading to the finding of nonresponsiveness is corrected or waived. Sierra/Misco, Inc., B-216147, Sept. 18, 1984, 84-2 CPD ¶ 320.

Accordingly, the protest is denied.

for 
Harry R. Van Cleve
General Counsel